

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHARLES J. HOMELSEY
aka CHARLES J. MAYBERRY,

Petitioner,

v.

MICHAEL DITTMAN,

Respondent.

ORDER

16-cv-47-bbc

On May 3, 2017, I ordered petitioner to pay \$76.89 as a partial payment of the \$505 fee for filing his appeal. Now, petitioner has submitted a motion for reconsideration of the May 3 order. Petitioner contends that he should be allowed to proceed in forma pauperis on appeal without paying an initial partial filing fee because his appeal is not subject to the 1996 Prison Litigation Reform Act.

Petitioner is correct that his appeal is not subject to the 1996 Prison Litigation Reform Act, Walker v. O'Brien, 216 F.3d 626, 628-629 (7th Cir. 2000) ("the PLRA does not apply to any requests for collateral relief under 28 U.S.C. §§ 2241, 2254, or 2255"). However, a court may nonetheless require an indigent appellant in a non-PLRA case to "pay a fee commensurate with their ability to do so." Walker v. O'Brien, 216 F.3d 626, 638 n.5 (7th Cir. 2000) (citing Longbehn v. United States, 169 F.3d 1082, 1083-84 (7th Cir. 1999)).

In determining the appropriate amount to assess petitioner, the court applies the formula set out in 28 U.S.C. § 1915(b)(1). Using that formula, I determined that petitioner owed a partial payment of the fee for filing his appeal of \$76.89, which he has paid. Accordingly, Petitioner's motion for reconsideration will be denied.

ORDER

IT IS ORDERED that petitioner's motion for reconsideration of the May 3, 2017 order, dkt. #49, is DENIED.

Entered this 6th day of September, 2017.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge